THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.12921 OF 2006

DATED: 30TH JUNE, 2006.

Between :

Kothapalli Sivanarayana … Petitioner

And

1. Govt. of A.P., rep. by its Secretary, Revenue (Ex.II) Department, Secretariat, Hyderabad., and 4 others. … Respondents

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WRIT PETITION NO.12921 OF 2006

ORDER :

This writ petition is filed seeking a declaration that the proceedings of the 4th respondent – Superintendent, Prohibition & Excise, Rajahmundry, East Godavari District, dated 23-6-2006 as arbitrary and illegal, and consequently to direct the respondents to forthwith issue licence to the petitioner to sell Indian Liquor and Foreign Liquor at premises No.32-2-3, Ward No.22 of Mandapeta Municipality, East Godavari District.

The facts, in brief, are as follows :

The 3rd respondent herein issued a notification dated 27-5-2006 inviting tenders for grant of lease under Rule 5 of the A.P. Excise (Lease of right of selling by shop and conditions of Licence) Rules, 2005 (for shot, 'the Rules'), for sale of Indian Liquor and Foreign Liquor by shop in the areas / localities specified in the list annexed to the said notification for the period from 1-7-2006 to 30-6-2008. So far as Mandapet Municipality is concerned, one shop each in six (6) wards namely Ward Nos.2, 6, 20, 22, 23 and 24 (Shop Nos.104 to 109) were notified specifying the upset price in respect of the respective wards. It is not in dispute that the petitioner was declared as the successful bidder in respect of Ward No.22 (Shop No.107). Thereafter, the petitioner deposited 1/6th of the amount and complied with all other formalities including execution of the Bank Guarantee. He had secured the premises bearing Door No.32-2-3 for locating the shop wherein

the licensee for the previous year (2005-06) in respect of Shop No.107 of Ward No.22 was also running his business. However, the 4h respondent by impugned proceedings dated 23-6-2006 informed the writ petitioner that the premises bearing Door No.32-2-3 proposed by him to locate the shop falls in Ward No.25 as per the change in the municipal wards and therefore he has to secure another building in Ward No.22 within 3 days.

The petitioner contends that in the notification, dated 27-5-2006, inviting tenders, it was not stated that Shop No.107 falls in Ward No.25 and that he was made to believe that the auction was for running business in Ward No.22. Therefore, it is not open to the 4th respondent to state that Ward No.22 mentioned in the notification dated 27-5-2006 should be read as Ward No.25 after finalising the entire tender process on the ground that there is a change in the municipal wards. It is contended that even in respect of the licensee for the previous excise year the Commissioner of Municipality issued a certificate showing that the premises bearing No.32-2-3 falls within Ward No.22 and the licensee of Ward No.22 located his shop in the said premises. Hence, he should be permitted to carry on business in the premises bearing Door No.32-2-3 in respect of Shop No.107 of Ward No.22 and the impugned action of the respondents is liable to be declared as arbitrary and illegal.

The petitioner in support of his contentions placed reliance upon the report of the Inspector of Prohibition & Excise, Alamuru, East Godavari District dated 6-6-2006 whereunder it was stated that the premises bearing Door No.32-2-3 is existing in Ward No.22 which was modified to be Ward No.25 only for the purpose of Municipal Elections, 2005 and contended that the change in the wards cannot be made applicable for the purpose of grant of licence under the Rules.

On behalf of the respondents, the Assistant Prohibition & Excise

Superintendent filed a counter-affidavit stating that the notification for delimitation of wards was issued on 29-8-2005 and subsequently the elections were held on 24-9-2005 basing on the very same notification. Since the said notification was issued in the middle of excise year, the existing shops were not disturbed. However, for the excise year 2006-08 the revised wards have been taken into consideration while issuing the notification for sale of IML shops. Thus, it is pleaded that since the premises bearing No.32-2-3 is situated in Ward No.25 of Mandapet Municipality, the 4th respondent has rightly issued the impugned proceedings calling upon the petitioner to secure a different premises in Ward No.22.

I have heard the learned Counsel for both the parties and perused the material on record.

Admittedly, the notification of delimitation of wards under the A.P. Municipalities Act, 1965 was published in the Gazette on 29-8-2005 and the same has come into existence w.e.f. 29-8-2005. As per the said notification, the premises bearing No.32-2-3 falls in Ward No.25 of Mandapet Municipality. The learned Government Pleader for Prohibition & Excise has placed before this Court a certificate issued by the Commissioner of Mandapet Municipality, dated 15-6-2006 which shows that the premises bearing No.32-2-3 which was hitherto situated in Ward No.22 has now been changed as Ward No.25. That apart, by letter dated 23-6-2006 addressed to the 4th respondent, the Commissioner of Municipality has clarified that so far as grant of licences under the A.P. Excise (Lease of right of selling by shop and conditions of licence) Rules, 2005, the wards as per the delimitation effected for the purpose of the Elections in the year 2005 have to be taken into consideration. The annexure to the said letter contained the list of 29 wards specifying the door numbers falling in the respective wards of Mandapet Municipality, which makes it clear that the

premises in question i.e., premises bearing No.32-2-3 falls within Ward No.25.

In the circumstances, I do not find any substance in the contentions raised by the petitioner. The areas/localities in the notification dated 27-5-2006 were only with reference to the wards in the Municipality and since the petitioner was the highest bidder for Ward No.22, he was granted the lease. Merely because for the previous year the shop in Ward No.22 was located in premises bearing No.32-2-3 the petitioner cannot contend that he was made to believe that he can carry on the business in the same premises. Shop No.107 is only the serial number given to the shop identified in Ward No.22. The lease granted in favour of the petitioner was in respect of Ward No.22 (area/locality) and he is bound to restrict his business within the said ward existing as on the date of the notification.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the 4th respondent cannot be said to have committed any error in calling upon the petitioner to secure another building in Ward No.22 for issue of licence.

Accordingly, the Writ Petition is dismissed. No costs.

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G. ROHINI, J.

Dt. 30-6-2006

gbs

Note:- CC by tomorrow.